
OLR Bill Analysis

sHB 6662

AN ACT CONCERNING THE RECOUPMENT OF MONEYS OWED TO A UNIT OWNERS' ASSOCIATION DUE TO NONPAYMENT OF ASSESSMENTS.

SUMMARY:

The Common Interest Ownership Act (CIOA) currently gives common interest community associations seeking to collect unpaid common charges a six-month priority lien over previously recorded security interests (e.g., mortgages). This bill makes several changes affecting this priority lien. It:

1. extends the period covered by the lien from six to nine months;
2. specifies that the lien applies in actions the mortgage holder brings to foreclose its mortgage on the unit as well as actions the association brings to foreclose its lien for unpaid common charges;
3. excludes from the priority lien any late fees, interest, or fines that the association assesses against the unit's owner during the nine-month period;
4. specifies that the lien only includes reasonable attorneys' fees;
5. requires an association to provide mortgage holders with 60 days' notice before bringing an action to foreclose its lien; and
6. prohibits an association from recovering costs or attorneys' fees in that action if it fails to provide the required notice (see COMMENT).

The bill also provides that CIOA's provisions concerning the priority of association liens (in regard to all other liens and encumbrances, not just mortgages) apply despite contrary provisions

in the association's declaration or bylaws (see BACKGROUND).

EFFECTIVE DATE: October 1, 2013

NOTICE TO MORTGAGE HOLDERS

The bill requires an association under CIOA, at least 60 days before bringing an action to foreclose a lien on a unit for unpaid assessments, to provide written notice to the holders of previously recorded mortgages on the unit. The notice must:

1. indicate the amount of unpaid common expense assessments owed to the association as of the notice date;
2. indicate the amount of attorneys' fees and costs the association incurred in enforcing its lien, as of that date; and
3. include a statement of the association's intention to foreclose its lien if it is not paid these amounts within 60 days of mailing the notice.

If the mortgage holder has brought an action to foreclose its mortgage on the unit, the association must send the required notice to the attorney appearing in that action on the mortgage holder's behalf. Otherwise, the association must deliver or mail the notice to the holder of the last-recorded security interest of record.

If the association fails to provide this notice, it cannot recover costs or attorneys' fees. Otherwise, its nine-month priority lien is not affected.

COMMENT

Failure to Provide Notice

The bill provides that if an association fails to provide the required notice to mortgage holders before bringing an action to foreclose its lien for unpaid assessments, the priority amount does not include costs and attorneys' fees. But another provision of law, unchanged by the bill, requires costs and attorneys' fees to be awarded to prevailing parties in lawsuits an association brings to enforce its lien (CGS § 47-

258(g)).

BACKGROUND

CIOA Liens

CIOA governs the creation, alteration, management, termination, and sale of condominiums and other common interest communities formed in Connecticut after December 31, 1983. Some provisions of CIOA, including those concerning statutory liens for assessments, also apply to common interest communities formed before then.

Under CIOA, common interest community associations have a statutory lien on a unit for common charges and other assessments attributable to that unit (CGS § 47-258(a)).

This lien has priority over all other liens and encumbrances on a unit, except for (1) those recorded before the recording of the declaration; (2) liens for real estate taxes and other government assessments or charges; and (3) first or second mortgages recorded before the assessment became delinquent, except for an amount equal to common expense assessments that would have become due during the six months (extended to nine months by the bill) immediately preceding an action to enforce the association's lien or the mortgage (CGS § 47-258(b)).

Related Bill

HB 6477 (File 219), reported favorably by the Insurance and Real Estate Committee, extends from six to 12 months the priority of common expense assessments over previously recorded mortgages under CIOA.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 44 Nay 0 (04/19/2013)